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EXAMINER

COLON, CATHERINE M

ART UNIT	PAPER NUMBER
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3623

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#19

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/419,266

Applicant(s)

THOMPSON ET AL.

Examiner

C. Michelle Colon

Art Unit

3623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 December 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) 2-4 and 7-9 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1 and 5 is/are allowed.
- 6) ☒ Claim(s) 6, 10-21 and 24-28 is/are rejected.
- 7) ☒ Claim(s) 22 and 23 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

1. The following is a Final Office Action in response to the communication received on December 10, 2002. Claims 1 – 28 are pending in this application. Claims 2 – 4 and 7 – 9 have been withdrawn from consideration. Claims 6, 10 – 12 and 25 – 27 have been amended. Accordingly, claims 1, 5, 6, 10 – 28 are addressed below.

***Terminal Disclaimer***

2. The terminal disclaimer filed on June 6, 2002 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of U.S. Patent No. 6,334,133 has been reviewed and is NOT accepted.

The terminal disclaimer does not comply with 37 CFR 1.321(b) and/or (c) because the terminal disclaimer was not signed.

Accordingly, the Double Patenting rejection from the Office Action of paper no. 11 is maintained and repeated below.

***Response to Amendment***

3. Applicant's amendments to claims 6, 10 – 12 and 25 – 27 are acknowledged. Specifically, the amendments to claims 6 and 27 are sufficient to overcome the 112 rejections and the claim objections set forth in the previous Office Action of paper no. 16. Therefore, the 112 rejections to claims 6 and 27 are withdrawn and the claim objection to claim 6 is withdrawn. However, the amendment to claim 12 has created a lack of antecedent basis; therefore, a new 112 rejection for claim 14 is set forth below.

***Response to Arguments***

4. Applicant's arguments have been fully considered but they are not persuasive. In the Remarks, Applicant argues that 1) claims 6 and 10, with the amended limitation, "*automatically* notifying personnel in said organization of results," (Emphasis added), are not anticipated by Subfinder; 2) neither Subfinder nor Taylor, teach or suggest "securing a substitute worker in response to the substitute worker selecting a posted position via the Internet communication link;" and 3) with regard to claim 28, Examiner failed to cite the requisite motivation to support the "ultimate legal conclusion" of obviousness under 35 U.S.C. §103.

In response to Applicant's argument 1), Examiner respectfully disagrees. Reference A, paragraph 9 explicitly discloses that the system automatically broadcasts status reports to the organizations daily. Applicant further argues that the system of the present application "generates reports and mails electronically and/or faxes the reports to designated personnel in an organization" (see page 13 of Remarks). However, it is noted that these features upon which applicant relies are not expressly recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to Applicant's argument 2), Examiner respectfully disagrees. Applicant argues that by "securing," Applicant means arranging for a worker to select a position and fill the position, which is what Taylor discloses. Taylor supplies a list of job postings on a web site where individuals can select the posted position they are

interested in. That Taylor uses a resume in the process of securing workers is irrelevant. Taylor enables users to select a job posting and submit a resume via the Internet. If the user is qualified, the user is selected and "secured" for the job position. If Applicant's intent is that workers are *automatically* or *immediately* secured for a position upon selection of a posted position on the website, then the claims should be amended to accordingly.

In response to Applicant's argument 3), Examiner respectfully disagrees. Subfinder is a system that receives absentee information representing absent workers, generates a list for those positions that need to filled, and attempts to fill those positions via telephone communication (see references A, B, C, D). Taylor is a system that uses the Internet to provide a list of job positions on a website and allow workers to indicate on the website a desired position (col. 1, lines 7 – 45). As such, both Subfinder and Taylor share similar objectives in their attempts to fill job positions. Subfinder teaches the recited steps in claim 28 using telephone communication instead of Internet communication. However, as suggested by Taylor, the Internet is a well-known communication means that provides users with immediate and direct access to information (col. 2, lines 34 – 39). Additionally, Subfinder suggests an urgency for schools to find workers quickly to fill positions immediately (reference C, page 1, paragraphs 1 – 6). Accordingly, at the time of the invention, it would have been obvious to a person of ordinary skill in the art to apply the well-known process as taught by Subfinder to the well-known communication means such as the Internet as taught by Taylor because the Internet enables schools to provide workers with immediate and

direct access to job postings so that they can fill positions quickly and efficiently. In conclusion, Examiner believes that the combination of Subfinder and Taylor is proper and sufficiently addresses the limitations of claim 28.

Additional arguments in the Remarks pertain to amended claims and therefore, are moot in view of the new grounds of rejection.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claim 14 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 14 recites the limitation "the at least one communication link." There is insufficient antecedent basis for this limitation in the claim. It appears that the amendment to claim 12, which removed the reference to "the at least one communication link" has created this issue.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

8. Claims 6 and 10 are rejected under 35 U.S.C. 102(a) as being anticipated by the Subfinder™ System (hereinafter, "Subfinder"). This is a product rejection. Therefore, the following references explaining the different aspects of Subfinder are considered as describing one product:

- "Automated Substitute Finder System," from the Internet (hereinafter, reference A);
- "Computer calls for substitutes," from *The Sun* (hereinafter, reference B);
- "School Watch The daily hunt for substitute teachers," from *The Atlanta Journal the Atlanta Constitution* (hereinafter, reference C); and
- "Myriad locations, student populations no longer hinder substitute management system," from *The Journal* (hereinafter, reference D)

As per claim 6, Subfinder discloses a method of performing substitute fulfillment by finding substitutes for absentee workers in an organization, comprising the steps of:

providing an automated substitute fulfillment system remote from said organization (reference A, page 1, paragraph 1; reference B, abstract; reference D, abstract; Subfinder is a system that allows school organizations to find substitute teachers. Subfinder further allows school district offices to house the system and separate school organizations to access the system remotely.);

wherein said organization is one or more of the group comprising schools, school districts, retail banks, branch offices of banks, convenience stores, manufacturing facilities, fire departments, police departments, hospitals, transportation departments,

airlines and temporary worker agencies (reference A, page 1, paragraph 1; reference B, abstract, page 2, paragraphs 16 and 17; reference D, abstract, page 1, paragraphs 3 – 6; Subfinder is a system that allows school organizations to find substitute teachers.);

initializing said substitute fulfillment system by creating a main database of stored substitute fulfillment data records (reference A, page 1, paragraphs 2 and 5; Subfinder maintains a database of absence and substitute fulfillment information.);

notifying said substitute fulfillment system of worker absence (reference A, page 1, paragraph 2; Subfinder allows employees to notify the system of absences.);

automatically identifying potential substitute workers using said substitute fulfillment system (reference A, page 1, paragraphs 2 and 3; reference C, page 1, paragraph 6; Subfinder automatically identifies potential substitute workers.);

automatically contacting potential substitute workers serially and relaying a replacement request until one potential substitute agrees to cover said absence or until all of the identified potential substitute workers are contacted (reference A, page 1, paragraphs 2 and 3; reference C, page 1, paragraph 6; Subfinder automatically calls potential substitute workers from a list of identified potential substitute workers until someone accepts the job or until the list is exhausted.);

automatically notifying personnel in said organization of the results (reference A, page 1, paragraphs 2 – 5 and 9; Subfinder automatically updates the substitute information in the database and further notifies personnel in the organization of the results by automatically broadcasting status reports to the individual sites daily.).



As per claim 10, Subfinder discloses a method of performing substitute fulfillment by finding floating workers for absentee workers in an organization, comprising the steps of:

providing an automated substitute fulfillment system remote from said organization (reference A, page 1, paragraph 1; reference B, abstract; reference D, abstract; Subfinder is a system that allows school organizations to find substitute teachers. Subfinder further allows school district offices to house the system and separate school organizations to access the system remotely.);

initializing said substitute fulfillment system by creating a main database of stored floating workers fulfillment data records (reference A, page 1, paragraphs 2 and 5; Subfinder maintains a database of absence and substitute fulfillment information.);

notifying said floating worker fulfillment system of a worker absence (reference A, page 1, paragraph 2; Subfinder allows employees to notify the system of absences.);

automatically identifying floating workers who should be notified by said system (reference A, page 1, paragraphs 2 and 3; reference C, page 1, paragraph 6; Subfinder automatically identifies potential substitute workers.);

automatically contacting a floating worker and relaying absent worker's position and location (reference A, page 1, paragraphs 2 and 3; reference C, page 1, paragraph 6; Subfinder automatically calls potential substitute workers from a list of identified potential substitute workers until someone accepts the job or until the list is exhausted.);

automatically notifying personnel in said organization of the results (reference A, page 1, paragraphs 2 – 5; Subfinder updates the substitute information in the database and further notifies personnel in the organization of the results via reports.).

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 11 – 21 and 24 – 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Subfinder<sup>TM</sup> System (hereinafter, "Subfinder"). This is a product rejection. Therefore, the following references explaining the different aspects of Subfinder are considered as describing one product:

- "Automated Substitute Finder System," from the Internet (hereinafter, reference A);
- "Computer calls for substitutes," from *The Sun* (hereinafter, reference B);
- "School Watch The daily hunt for substitute teachers," from *The Atlanta Journal the Atlanta Constitution* (hereinafter, reference C); and
- "Myriad locations, student populations no longer hinder substitute management system," from *The Journal* (hereinafter, reference D).

As per claim 11, Subfinder discloses a substitute fulfillment system that identifies and secures substitute workers for a plurality of organizations comprising:

a database comprising worker records, said worker records having information associated with workers for each of the organizations, and substitute records, said substitute records having information associated with at least one substitute worker (reference A, page 1, paragraphs 2 and 5; reference D, abstract; Subfinder maintains a database of worker records including absence and substitute fulfillment information.); and

a server coupled to the database (reference D, page 2, paragraphs 11 and 12), the server is configured for:

receiving absentee information representing an absent worker via at least one communication link coupled to the server (reference A, page 1, paragraph 2; Subfinder receives absentee information of an absent worker via a telephone communication.);

generating in response to receiving the absentee information a list of one or more potential substitute workers who can fill in for the absent worker using the worker records associated with the absent worker and the substitute records (reference A, page 1, paragraphs 2 and 3; reference C, page 1, paragraph 6; Subfinder automatically identifies potential substitute workers.); and

contacting potential substitute workers listed on the generated list until one of the substitute worker agrees to fill in for the absent worker or until the generated list is exhausted (reference A, page 1, paragraphs 2 and 3; reference C, page 1, paragraph 6;

Subfinder automatically calls potential substitute workers from a list of identified potential substitute workers until someone accepts the job or until the list is exhausted.).

Subfinder does not expressly disclose that the organizations are different. However, reference B does disclose the use of Subfinder for personnel other than teachers (page 2, paragraph 16) and reference D discloses using Subfinder for a 400-school district that encompasses a vast array of schools with differing teacher responsibilities and qualifications and that is geographically diverse (abstract, page 1, paragraphs 3 – 6).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to have the substitute fulfillment system include differing organizations because even differing organizations have overlapping responsibilities and positions. By using a central substitute fulfillment system, the differing organizations can pool substitute worker resources and fill absent positions more effectively and efficiently.

Subfinder also does not expressly disclose receiving absentee information via an *Internet* communication link. However, Subfinder does teach receiving absentee information (reference A, page 1, paragraph 2). Merely providing an automated way to replace a well-known activity that accomplishes the same result is not sufficient to distinguish over the prior art (*In re Venner*, 262 F.2d 91, 95, 120 USPQ 193, 194 (CCPA 1958).). Therefore, at the time of the invention, it would have been obvious to automate the process of receiving absentee information because doing so improves the performance and efficiency of receiving information. Furthermore, Subfinder teaches

taking advantage of automation by using a telephone link to conduct receiving absentee information. Additionally, the Internet is a well-known automation means that provides users immediate accessibility of information. Therefore, at the time of the invention, it would have been obvious to use the Internet instead of the telephone to receive absentee information because the Internet provides organizations with immediate access to absentee information.

As per claim 12, Subfinder discloses the substitute fulfillment system of claim 11 wherein the server is further configured to receive absentee information via a telephone communication link (reference A, page 1, paragraph 2; Subfinder receives absentee information of an absent worker via a telephone communication.).

As per claim 13, Subfinder discloses the substitute fulfillment system of claim 12 wherein the server generates the list of one or more substitute workers using a preferred list of substitute workers associated with the worker record for the absent worker (reference A, page 1, paragraph 2; reference B, page 1, paragraph 6; reference C, page 2, paragraph 7; Subfinder creates a list of the most preferred or qualified substitute workers.).

As per claim 14, Subfinder discloses the substitute fulfillment system of claim 12 wherein the server is further configured to generate a list of absent workers for an organization and to transmit the generated list of absent workers to the organization via the at least one communication link (reference A, page 1, paragraphs 2, 5 and 7; reference D, abstract, page 1, paragraph 3, page 2, paragraphs 11 and 12; Subfinder

can be accessed by an organization remotely and, therefore, the list of absent workers can be accessed by an organization remotely via at least one communication link.).

As per claim 15, Subfinder discloses the substitute fulfillment system of claim 12 wherein the server is further configured to generate a list of substitute workers and names of the absent workers who the substitute workers will be filling in for a given organization and to transmit the generated list of substitute worker and names of the absent workers who the substitute workers will be filling in for to the given organization via the at least one communication link (reference A, page 1, paragraphs 2, 4 and 5; Subfinder generates a list of substitute workers as well as the names of absent workers who the substitutes will be filling for. Organizations can access the lists remotely via at least one communication link.).

As per claim 16, Subfinder discloses the substitute fulfillment system of claim 12 further comprising an interactive voice response system controlled by the server for interacting with a potential substitute worker from the generated list of potential substitute workers via at least one telephone communication link whereby the potential substitute worker is secured for filling in for the absent worker (reference A, page 1, paragraphs 2, 4 and 5; reference B, abstract, page 2, paragraph 9; reference C, page 1, paragraph 6; reference D, page 2, paragraph 11; Subfinder uses an interactive voice response system to interact with potential substitute workers.).

As per claim 17, Subfinder discloses the substitute fulfillment system of claim 12 wherein the server is further configured to receive a message via the at least one communication link and to forward the received message to the substitute worker who

agrees to fill in for the absent worker via the at least one communication link (reference A, page 1, paragraphs 2, 4 and 5; reference B, abstract, page 2, paragraphs 9 and 21; reference C, page 1, paragraph 6; reference D, page 2, paragraph 11; Subfinder can receive messages and forward them to substitute workers.).

As per claim 18, Subfinder discloses the substitute fulfillment system of claim 11 wherein each worker record comprises worker identification, contact, position, qualification, and substitute selection information (reference A, page 1, paragraphs 2, 4 and 5; reference C, page 2, paragraph 7).

As per claim 19, Subfinder discloses the substitute fulfillment system of claim 11 wherein each worker record further comprises entitlement information and historical information of absences and substitute fulfillment events (reference A, page 1, paragraphs 2, 4 and 5; reference C, page 1, paragraph 6).

As per claim 20, Subfinder discloses the substitute fulfillment system of claim 11 wherein each substitute worker record comprises substitute identification, contact, qualification, and availability information (reference A, page 1, paragraphs 2, 4 and 5; reference C, page 2, paragraph 7).

As per claim 21, Subfinder does not expressly disclose the substitute fulfillment system of claim 11 wherein the organizations are unaffiliated.

However, reference B does disclose the use of Subfinder for personnel other than teachers (page 2, paragraph 16) and reference D discloses using Subfinder for a 400-school district that encompasses a vast array of schools with differing teacher

responsibilities and qualifications and that is geographically diverse (abstract, page 1, paragraphs 3 – 6).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to have the substitute fulfillment system include unaffiliated organizations because even unaffiliated organizations have overlapping responsibilities and positions. By using a central substitute fulfillment system, the unaffiliated organizations can pool substitute worker resources and fill absent positions more effectively and efficiently.

As per claim 24, Subfinder discloses the substitute fulfillment system of claim 11 wherein the workers are teachers and the substitute workers are substitute teachers (reference A, page 1, paragraphs 1 and 2; reference B, abstract; reference C, page 1, paragraph 6, page 2, paragraph 7; reference D, abstract).

As per claim 25, Subfinder discloses a substitute fulfillment system that identifies and secures by finding substitute workers for a plurality of organizations comprising:

a database comprising worker records, said worker records having information associated with workers for each of the organizations, and substitute records, said substitute records having information associated with at least one substitute worker (reference A, page 1, paragraphs 2 and 5; reference D, abstract; Subfinder maintains a database of worker records including absence and substitute fulfillment information.);  
and

a server coupled to the database (reference D, page 2, paragraphs 11 and 12),  
the server is configured for:



receiving absentee information representing an absent worker via at least one communication link coupled to the server (reference A, page 1, paragraph 2; Subfinder receives absentee information of an absent worker via a telephone communication.);

generating in response to receiving the absentee information a list of one or more potential substitute workers who can fill in for the absent worker using the worker records associated with the absent worker and the substitute records (reference A, page 1, paragraphs 2 and 3; reference C, page 1, paragraph 6; Subfinder automatically identifies potential substitute workers.); and

contacting potential substitute workers listed on the generated list until one of the substitute worker agrees to fill in for the absent worker or until the generated list is exhausted (reference A, page 1, paragraphs 2 and 3; reference C, page 1, paragraph 6; Subfinder automatically calls potential substitute workers from a list of identified potential substitute workers until someone accepts the job or until the list is exhausted.).

Subfinder does not expressly disclose that the organizations are different. However, reference B does disclose the use of Subfinder for personnel other than teachers (page 2, paragraph 16) and reference D discloses using Subfinder for a 400-school district that encompasses a vast array of schools with differing teacher responsibilities and qualifications and that is geographically diverse (abstract, page 1, paragraphs 3 – 6).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to have the substitute fulfillment system include differing

organizations because even differing organizations have overlapping responsibilities and positions. By using a central substitute fulfillment system, the differing organizations can pool substitute worker resources and fill absent positions more effectively and efficiently.

Subfinder does not expressly disclose receiving *from* an organization an absentee *list* comprising one or more absent workers; however, Subfinder does disclose that prior to the use of Subfinder, schools compiled lists of absent teachers to be used for finding substitute teachers to fill the absent positions (reference D, page 1, paragraph 7). Accordingly, Subfinder teaches that it is old and well known in the art of finding substitutes for absent teachers for the school (i.e., the organization) to compile an absentee list prior to finding substitutes to fill in for each absent worker on the list. Thus, at the time of the invention, it would have been obvious to a person of ordinary skill in the art to receive from an organization, via a communication link, an absentee list comprising one or most absent workers because the organization was already conducting the process (of generating an absentee list) prior to incorporating the process with the substitute fulfillment system; and therefore, it would have provided the organization with a natural transition to using the system.

Subfinder also does not expressly disclose receiving absentee information via an *Internet* communication link. However, Subfinder does teach receiving absentee information (reference A, page 1, paragraph 2). Merely providing an automated way to replace a well-known activity that accomplishes the same result is not sufficient to distinguish over the prior art (*In re Venner*, 262 F.2d 91, 95, 120 USPQ 193, 194 (CCPA

1958).). Therefore, at the time of the invention, it would have been obvious to automate the process of receiving absentee information because doing so improves the performance and efficiency of receiving information. Furthermore, Subfinder teaches taking advantage of automation by using a telephone link to conduct receiving absentee information. Additionally, the Internet is a well-known automation means that provides users immediate accessibility of information. Therefore, at the time of the invention, it would have been obvious to use the Internet instead of the telephone to receive absentee information because the Internet provides organizations with immediate access to absentee information.

As per claim 26, Subfinder discloses a method for performing substitute fulfillment for a plurality of different organizations comprising:

receiving absentee information representing an absent worker via at least one communication link (reference A, page 1, paragraph 2; Subfinder receives absentee information of an absent worker via a telephone communication.);

generating in response to receiving the absentee information a list of one or more potential substitute workers who can fill in for the absent worker using worker records having information associated with at least one substitute worker (reference A, page 1, paragraphs 2 and 3; reference C, page 1, paragraph 6; Subfinder automatically identifies potential substitute workers.);

contacting potential substitute workers listed on the generated list via at least one telephone link (reference A, page 1, paragraphs 2 and 3; reference C, page 1, paragraph 6; Subfinder automatically calls potential substitute workers from a list of

identified potential substitute workers until someone accepts the job or until the list is exhausted.); and

interacting with the potential substitute worker using an interactive voice response system until one of the substitute workers agrees to fill in for the absent worker or until the generated list is exhausted (reference A, page 1, paragraphs 2 and 3; reference C, page 1, paragraph 6; Subfinder automatically calls potential substitute workers from a list of identified potential substitute workers until someone accepts the job or until the list is exhausted.).

Subfinder does not expressly disclose that the organizations are different. However, reference B does disclose the use of Subfinder for personnel other than teachers (page 2, paragraph 16) and reference D discloses using Subfinder for a 400-school district that encompasses a vast array of schools with differing teacher responsibilities and qualifications and that is geographically diverse (abstract, page 1, paragraphs 3 – 6).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to have the substitute fulfillment system include differing organizations because even differing organizations have overlapping responsibilities and positions. By using a central substitute fulfillment system, the differing organizations can pool substitute worker resources and fill absent positions more effectively and efficiently.

Subfinder also does not expressly disclose receiving absentee information via an *Internet* communication link. However, Subfinder does teach receiving absentee

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information (reference A, page 1, paragraph 2). Merely providing an automated way to replace a well-known activity that accomplishes the same result is not sufficient to distinguish over the prior art (*In re Venner*, 262 F.2d 91, 95, 120 USPQ 193, 194 (CCPA 1958)). Therefore, at the time of the invention, it would have been obvious to automate the process of receiving absentee information because doing so improves the performance and efficiency of receiving information. Furthermore, Subfinder teaches taking advantage of automation by using a telephone link to conduct receiving absentee information. Additionally, the Internet is a well-known automation means that provides users immediate accessibility of information. Therefore, at the time of the invention, it would have been obvious to use the Internet instead of the telephone to receive absentee information because the Internet provides organizations with immediate access to absentee information.

As per claim 27, Subfinder discloses a method for performing substitute fulfillment for a plurality of organizations comprising:

receiving absentee information via at least one communication link representing one or more absent workers (reference A, page 1, paragraph 2; Subfinder receives absentee information of an absent worker via a telephone communication.);

generating in response to receiving the absentee information one or more lists of more or more potential substitute workers who can fill in for each absent worker using worker records having information associated with the absent worker and substitute records having information associated with at least one substitute worker (reference A,

page 1, paragraphs 2 and 3; reference C, page 1, paragraph 6; Subfinder automatically identifies potential substitute workers.); and

contacting potential substitute workers listed on each of the generated lists until one of the substitute workers in each of the generated lists agrees to fill in for the absent worker or until the generated list is exhausted for each generated list until all of the generated lists are exhausted (reference A, page 1, paragraphs 2 and 3; reference C, page 1, paragraph 6; Subfinder automatically calls potential substitute workers from a list of identified potential substitute workers until someone accepts the job or until the list is exhausted.).

Subfinder does not expressly disclose receiving *from* an organization an absentee *list* comprising one or more absent workers; however, Subfinder does disclose that prior to the use of Subfinder, schools compiled lists of absent teachers to be used for finding substitute teachers to fill the absent positions (reference D, page 1, paragraph 7). Accordingly, Subfinder teaches that it is old and well known in the art of finding substitutes for absent teachers for the school (i.e., the organization) to compile an absentee list prior to finding substitutes to fill in for each absent worker on the list. Thus, at the time of the invention, it would have been obvious to a person of ordinary skill in the art to receive from an organization, via a communication link, an absentee list comprising one or most absent workers because the organization was already conducting the process (of generating an absentee list) prior to incorporating the process with the substitute fulfillment system; and therefore, it would have provided the organization with a natural transition to using the system.

11. Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Subfinder as discussed above and Taylor (U.S. 5,832,497).

As per claim 28, Subfinder discloses a method for performing substitute fulfillment for a plurality of different organizations comprising:

receiving absentee information representing an absent worker via at least one communication link (reference A, page 1, paragraph 2; Subfinder receives absentee information of an absent worker via a telephone communication.);

generating a list of positions of absent workers that need to be filled by substitute workers (reference A, page 1, paragraphs 2 and 3; reference C, page 1, paragraph 6; Subfinder automatically identifies potential substitute workers.).

Subfinder does not expressly disclose placing the list of positions on a website, receiving a response by a substitute worker selecting a posted position on the website via an Internet communication link; and securing via the Internet communication link the substitute worker who selected the posted position to fill in for the absent worker.

Taylor discloses placing the list of positions on a website, receiving a response by a substitute worker selecting a posted position on the website via an Internet communication link (col. 4, line 63 – col. 5, line 5; col. 5, lines 49 – 62; The reference discloses allowing workers to select a posted position by submitting an application for that position.); and

securing via the Internet communication link the substitute worker who selected the posted position to fill in for the absent worker (col. 4, line 63 – col. 5, line 5; col. 5,

lines 49 – 62; The reference discloses allowing employers to review submitted applications for hiring of workers for particular job postings.).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to utilize a website interface to interact with substitute workers searching for work because the Internet provides a convenient and globally accessible medium through which users can easily and quickly interact (Taylor, col. 2, lines 34 – 39).

### ***Double Patenting***

12. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

13. Claims 11, 12, 18 – 20, 22, 23 and 25 are rejected under the judicially created doctrine of double patenting over claims 1 – 4 and 6 of U. S. Patent No. 6,334,133 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.



The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows:

- Claim 11 of the current application is a broader recitation of claim 1 of U. S. Patent No. 6,334,133;
- Claim 12 of the current application is a broader recitation of claim 1 of U. S. Patent No. 6,334,133;
- Claim 18 of the current application is a broader recitation of claim 2 of U. S. Patent No. 6,334,133;
- Claim 19 of the current application is a broader recitation of claim 3 of U. S. Patent No. 6,334,133;
- Claim 20 of the current application is a broader recitation of claim 4 of U. S. Patent No. 6,334,133;
- Claim 22 of the current application is a broader recitation of claim 6 of U. S. Patent No. 6,334,133;
- Claim 23 of the current application is a broader recitation of claim 6 of U. S. Patent No. 6,334,133;
- Claim 25 of the current application is a broader recitation of claim 1 of U. S. Patent No. 6,334,133.

14. Claims 6, 13 – 17, 21 and 24 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. U. S. Patent No. 6,334,133. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 6, 13 – 17, 21 and 24 each contain obvious modifications to claim 1 of U.S. Patent No. U. S. Patent No. 6,334,133.

As per claim 6, at the time the invention was made, it would have been obvious to a person of ordinary skill in the art to notify personnel of an organization as to whether or not a substitute worker has agreed to cover an absence because the organization has accounting, billing and other human resource accommodations to prepare for the substitute worker.

As per claim 13, at the time the invention was made, it would have been obvious to a person of ordinary skill in the art to have the list of substitute workers include a preferred list of substitute workers because doing so would ensure that only individuals with appropriate and required credentials would be allowed to fill absent worker positions.

As per claim 14, at the time the invention was made, it would have been obvious to a person of ordinary skill in the art to transmit the generated list of absent workers to the organization via at least one communication link because doing so provides a vital means of making appropriate personnel aware of those workers who are absent and thus enabling personnel to take any necessary action as a result.

As per claim 15, at the time the invention was made, it would have been obvious to a person of ordinary skill in the art to generate a list of substitute workers and names

of the absent workers who the substitute workers will be filling in for a given organization and to transmit the generated list of substitute workers and names of the absent workers to the given organization via at least one communication link because doing so provides a vital means of notifying appropriate personnel of those workers who are absent and the substitute workers who will be filling in for the absent workers and thus enabling personnel to take any necessary action as a result.

As per claim 16, at the time the invention was made, it would have been obvious to a person of ordinary skill in the art to have an interactive voice response system interact with a potential substitute worker whereby the substitute worker is secured for filling in for the absent worker because doing so provides an automated, convenient and efficient means that does not require a human resource on the substitute fulfillment end for securing a substitute worker.

As per claim 17, at the time the invention was made, it would have been obvious to a person of ordinary skill in the art to receive and forward a message to the substitute worker who agrees to fill in for the absent worker because doing so enables communication to the substitute worker of any pertinent information relevant to the position.

As per claim 21, at the time the invention was made, it would have been obvious to a person of ordinary skill in the art to have the organizations be unaffiliated because doing so would provide a broader reach of industries and therefore more customers for the substitute fulfillment system to serve.

As per claim 24, at the time the invention was made, it would have been obvious to a person of ordinary skill in the art to have the substitute workers be substitute teachers because the teaching industry has for a long time required the use of substitute teachers to fill in for both unexpected as well as expected absences of teachers.

***Allowable Subject Matter***

15. Claims 22 and 23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Reasons for Allowance***

16. Claims 1 and 5 are allowed.

The following is an examiner's statement of reasons for allowance: None of the prior art of record, taken individually or in any combination, teach, *inter alia*,

a central server that processes information associated with a plurality of different organizations; a central database coupled to the central server, the central database including records that store substitute fulfillment data associated with each of the plurality of different organizations, wherein for each of the different organizations the fulfillment data includes worker records representing workers that may be absent from the organization and substitute worker records representing substitute workers that may be used to fill a position of an absent worker; a plurality of local processors that are

remote from the central server, each of the local processors being associated with one of the different organizations and having a separate local database coupled thereto, wherein each local database is associated with one of the different organizations and includes worker records representing workers that may be absent from the organization and substitute worker records representing substitute workers that may be used to fill a position of an absent worker; wherein the central database maintains each of the records on each local database in parallel with a corresponding record on the central database by periodically updating the records on the local databases in response to data changes on the central database, and wherein each local database maintains records on the central database in parallel with corresponding records on the local database by periodically updating the records on the central database in response to data changes on the local database; at least one telephone communication link coupled to the central server, wherein the telephone communication link provides information representing absent workers to the central server, the central server identifies one or more of the substitute workers in response to the information representing absent workers, and the central server communicates information representing positions to be filled to substitute workers via the telephone communication link or an Internet communication link; and wherein the central server periodically transmits reports that include absentee and substitute information to each of the different organizations via the telephone communication link or the Internet communication link.

The prior art references most closely resembling the Applicant's claimed invention are the product, Subfinder<sup>TM</sup> whose articles describing it are provided in

further detail below, and "'TeacherReacher' A New Feature," *NEA Today*, November 1992.

First, Subfinder<sup>TM</sup> is a system that allows school districts to automatically find and schedule substitute teachers upon notification of an absence. The system uses a database of personnel information to find and create a list of preferred substitutes and automatically calls the substitutes on the list until the position is filled. However, Subfinder<sup>TM</sup> does not teach or suggest the maintaining of substitute fulfillment data representing worker records and substitute records of a plurality of different organizations on local, remote databases wherein the substitute fulfillment data is further mirrored on a central database, and a central server that process information from the central database further identifying one or more substitute workers in response to information representing absent workers, and communicating information representing positions to be filled to substitute workers via the telephone communication link or an Internet communication link.

Second, "'TeacherReacher' A New Feature" discusses a service that allows schools to acquire substitute teachers upon short notices by searching through a database and automatically calling the list of potential substitutes until someone accepts. However, "'TeacherReacher' A New Feature" does not teach or suggest the maintaining of substitute fulfillment data representing worker records and substitute records of a plurality of different organizations on local, remote databases wherein the substitute fulfillment data is further mirrored on a central database, and a central server that process information from the central database further identifying one or more

substitute workers in response to information representing absent workers, and communicating information representing positions to be filled to substitute workers via the telephone communication link or an Internet communication link.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### ***Conclusion***

17. Claims 1 and 5 are allowed. Claims 6, 10 – 28 are rejected.
18. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Michelle Colon whose telephone number is 703-605-4251. The examiner can normally be reached Monday – Thursday from 8:30am to 5:30pm and every other Friday from 8:30am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz, can be reached at 703-305-9643.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

Any response to this action should be mailed to:

***Commissioner of Patents and Trademarks***

***Washington D.C. 20231***

or faxed to:

703-305-7687 [Official Communications; including After Final  
communications labeled "Box AF"]

703-746-7202 [For status inquiries, draft communication, labeled  
"Proposed" or "Draft"]

Hand delivered responses should be brought to Crystal Park 5, 2451 Crystal  
Drive, Arlington, VA 7<sup>th</sup> floor receptionist.

*cmc*  
cmc

February 13, 2003

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